1945

File No. S-Kan-3/45

Legal DEPARTMENT

"A" BRANCH

Examined

Subject:—

In the Court of the Civil Judge (Senior Divn)
Karwar (Kanara)

Kanara Civil Suit No 113 of 1945

Sayad Isac Sayad Budan Plff

Vs

(1) The Province of Bombay
(2) The Regional Transport Board, Belgaum
(3) The Provincial Transport Authority, Bombay } Defts

P 60/E

File No. S-Kan-3/45

Std Sectt. Slip 24-P

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Sr. No.	Compilation No.	Subject	Pages
		Suits Kanara	
	1	C.S. No. No. 113 of 1945	
		Sayad Isac Sayad Buden.	
		Vs.	
		Province of Bombay Regional Transport Board. Provincial Transport Authority.	
		For 1) a declaration that the plff. is the legal tranferee of the permits for two motor buses and that the order passed by deffs. Nos. 2 and 3 refusing to recognise such transfer are illegal 2) Recovery of Rs. 995- as damages 3) from the defs. 3) a mandatory injunction directing the defs. to transfer the aforesaid permits and route to the plffs	
1.	Printed L.D.G.R. No. 8582. dt. 17-11-45	Sanctioning the defence of the suit	33.
2.	L.D.G.R. No. 75241 dt. 21-7-47.	Recording the result of the suit.	59.

PROVINCIAL TRANSPORT OFFICE,
File No. J.6/246
Date 28.8.45
Serial No. 23434

No. 9177 /4-T/KR/113 of 1945.
Office of the Regional Transport Officer,
Belgaum, 24th August 1945.

To

The Remembrancer of Legal Affairs,
Bombay Castle, BOMBAY.

Subject: Civil Suit No.113 of '45 filed by Mr.Sayed Isac Sayed Budan of Sirsi.

Sir,

With reference to your letter No. 5958 dated 10-8-1945, I have the honour to submit the following report in duplicate under Rule 118 of the Law Officers Rules on the above subject.

Rule 118(1).

i)	The number of the suit:	113 of 1945.
ii)	The date on which & the Court in which it was instituted:	Instituted on 21-6-45/14-7-45 in the Court of the Civil Judge, Senior Division, Karwar.
iii)	The names of all the parties	Mr. Sayed Isac Sayed Budan, Sirsi, N.Kanara.
iv)	The amount or value of the claim:	Rs. 1,000/-.
v)	The date fixed by the court for the first hearing:	29-8-1945.
vi)	Whether notice of the action has been given under Sec.80 of the Civil Procedure Code & if so, the date of delivery of the Notice.	Notice dated 6-12-44 (Pages 193,194) under Sec.80 of the Civil Proce-dure Code was received by the R.T.O. on 8-12-44.

2. Attention is invited in particular to Rule 62, Bombay Motor Vehicles Rules, 1940, as the plaint (pages 197 to 200) dates back to the period during which all applications for a permit issued by a competent authority under the provisions of any rules made under the Indian Motor Vehicl Act, 1914, were being dealt with by the ther newly constituted Regional Transport Authorities under the provisions of Rule 62. The Regional Transport Authority, Karnatak Region, Belgaum issued notifications (copies enclosed, pages 201 to 202), which were published in Bombay Government Gazette, part I dated 5-1-40, 19-9-40, 23-1-41, 13-3-41 and 19-6-41 on pages 1575, 3045, 213, 818 and 2102 respectively.

3. The plaintiff held a valid permit issued by the District Superintendent of Police, Kanara for the year 1939-40 for one Stage Carriage under Rule 3 of the Rules regulating the use of motor vehicles let or plying for hire (District Taxi Rules), notified in Government Notification, H.D. No.8623 dated 10-2-1927 (vide entry marked X

on page flagged A in the Register of Public Motor Owners("A" permits) maintained by the Office of the District Superintendent of Police, Kanara for the year 1939-40). This permit was to ply one stage carriage on the Sirsi-Kumta route. This permit held by the plaintiff was in respect of stage carriage No. W- 6107. The plaintiff held no other permit during 1939-40 for any other route.

4. Mr. Shaik Kassim Shaik Suleman Kagal mentioned in para 1 of the plaint held a permit granted by the District Supdt.of Police, Kanara under rule 3 (District Taxi Rules) for two stage carriages for the -- Sirsi-Kumta route for the year 1939-40 (vide entries marked X on pages flagged B and C in the register mentioned in para 3 above). This permit was in respect of stage carriages Nos. T 6527 and K 3534. But stage carriage No. K 3534 was seized on 27-9-39 by -- Messrs. The Commercial Credit Corporation Ltd Bombay, from whom he had taken the vehicle on hire purchase terms, for non-payment of the firms dues(page 65). Mr. Shaik Kassim Shaik Suleman Kagal held no other permit for any other route in 1939-40.

5. Rule 118(2)(b).

Comments on statement marked (a) in para 1 of the plaint :-

Mr. Shaik Kassim Shaik,Suleman Kagal held a permit issued by the District Superintendent of Police, Kanara valid for 1939-40 in respect of two stage carriages Nos. T 6527 and K 3534 for the Sirsi-Kumta route issued under Rule 3(District Taxi Rules,1927). He lost possession of stage carriage No.3534-K due to it being seized on 27-9-39 by Messrs. The Commercial Credit Corporation Ltd.,Bombay from whom he had held the vehicle on hire purchase terms. (Page 65). He did not hold any valid permit on Kumta-Sirsi-Hubli route for 1939-40 as stated by plaintiff.

6. Comments on statement marked (b) in para 1 of the plaint.

No transfer of permits to the name of the plaintiff had been effected by the District Supdt.of Police, Kanara or the Regional Transport Authority, Belgaum.

7. Comments on statement marked(c) in para 1 of the plaint :-

The decree of the Civil Court, Sirsi in Suit No. 384 of 1941(pages 157 to 160), which is based on a compromise, cannot be claimed to be a transfer of permit under the Motor Vehicles Act IV of 1939 and Rules framed thereunder. The transfer of a permit must be effected by the Regional Transport Authority or by the District Superintendent of Police. In the latter case under Rule 4 and in the former under Rule 74. Moreover, the decree referred to was issued by the Civil Court at Sirsi on 20-12-41 and applications for permits submitted by the plaintiff and Mr.Shaik Kasim Shaik Suleman Kagal(pages 5 to 8 and 61 to 62) were -- disposed of --

disposed of by the Regional Transport -- Authority on 6-9-40 and 3-12-40(in the -- plaintiff's case pages 29 and 79) and 4-2-41(page 109) respectively.

It may please be noted that the Suit was filed on 4-11-41 long after 4-2-41 on which date Mr.Shaik Kassim Shaik Suleman Kagal's application had been -- rejected and further plaintiff's application for a permit had been rejected on 3-12-40. It therefore prima facie appears that this Suit was a collusive suit in order to create evidence of the alleged transfer -- transaction. It therefore follows that plaintiff cannot rely on the compromise decree made in the suit and it is in no way binding against the defendants.

The plaintiff's contention in para 2 of the plaint that he was not ~~thexxmm~~ given an opportunity of placing his case before the Provincial Transport Authority and that the appeal was disposed of on the bare reports of defendant No.2 and the District Superintendent of Police are not correct. From the orders in appeal, it appears that he was given proper opportunity and that he produced certain permits in support of his case. The order would show that he took a different stand by producing permits of two vehicles Nos.T 7913 and N 5484 which had been taken by Mr.Shaik Kassim Shaik Suleman Kagal on hire purchase system from one Mr.G.C.Deshpande of Belgaum(page 67) The appellate authority found that the period of the permits of these vehicles had expired on 31-3-39. The registered numbers of these two vehicles were quite different from those mentioned by the -- plaintiff in his earlier application of 17-6-40(pages 5 to 8). This would show that plaintiff has been changing his stand from time to time. In the present suit he has mentioned only the registered number of one vehicle viz: BYX 786(formerly T 6527) without mentioning the registered numbers of the other two vehicles about which he seeks declaration and damages.

The ownership of the motor vehicle No.BYX 786 referred to was transferred to the name of the plaintiff on 11-8-41(page 121). The original registered number of this bus was T- 6527. Later, plaintiff was granted replacement of his bus No. BYX 853(formerly W- 6107) by bus No. BYX 786 as he then held a permit for one stage carriage only granted by the Regional Transport Authority(135 and 136 pages, and page 29 respectively). No transfer of permits had been effected by the Regional Transport Authority.

8. Comments on statements marked (d) in para 2 of the plaint:

Attention is invited to Rule 62(1)(ii) of the Bombay Motor Vehicles Rules, 1940. Mr.Shaik Kasim Shaik Suleman Kagal was asked by this office(page 47) to apply for permits under the M.V.Act IV of 1939 if he had any interest in the buses and routes. Accordingly, Mr.Shaik Kassim Shaik Suleman Kagal applied for permits for three

three vehicles without mentioning their registered numbers for the Sirsi-Kumta -- route to be issued in the name of the -- plaintiff(page 61 and 62). The plaintiff also had on 17-6-40 applied for permits for three vehicles giving the registered number of his own vehicle viz: W- 6107 and two other registered numbers one of which viz: T-6527 was in the name of Mr.Shaik Kassim Shaik Suleman Kagal and the other viz: W- 2253 was purchased by the plaintiff during the year 1939-40 from One Mr.Pedro Salvadore Noronha of Sirsi who was using the vehicle for carriage of fish.

Pedro Salvadore Noronha

The plaintiff never held any permit for this vehicle for any route from the District Superintendent of Police, Kanara.
The plaintiff represented that he had a right to the permits held by Mr.Shaik Kassim Shaik Suleman Kagal of Sirsi. Both these applications were considered and disposed of by the Regional Transport Authority, Karnatak Region, Belgaum on 6-9-40 and 3-12-40(in the case of the plaintiff) and 4-2-41, as mentioned above. A permit for one stage carriage was granted to the -- plaintiff(page 29)&(page 79).
The application for a permit under the M.V.Act IV of 1939 submitted by Mr.Shaik Kassim Shaik Suleman Kagal was considered and rejected on the ground that he had no interest in motor business and that the route was adequately served by the existing -- operators(page 109), under Section 47(c) of the M.V.Act IV of 1939.

9. Comments on statements marked (e) in para 2 of the plaint:

The decision of the appellate authority in this case is at page 187 to 189. It should particularly be noted that the plaintiff held a permit for one stage carriage only in 1939-40 granted by the -- District Superintendent of Police,Kanara, vide permit No.79 on page flagged A in the register of "A" permits for the year 1939-40 and the Regional Transport Authority granted him a permit under the M.V.Act IV of 1939 for the same stage carriage. Moreover, the plaintiff in his application for a stage carriage permit, applied for a permit in respect of three stage carriages, whereas he did not hold a permit granted by the District Superintendent of Police under the Indian Motor Vehicles Act,1939 for three stage carriages. He was therefore granted a permit for one stage carriage to which he was legally entitled and the application in respect of two additional stage carriages was considered as an -- application for a fresh permit and rejected by the Regional Transport Authority, vide Rule 62(1)(ii) and rule 71(4) of the B.M.V. Rules,1940 and Sec.47 of the M.V.Act IV of 1939.

10. Comments on statement marked (f) in para 3 of the plaint.

Applications for permits under the M.V.Act,1939 were considered by the Regional Transport Authority under the provisions of Rule 62 of the B.M.V.Rules, 1940 on the merits of each application.

Permits

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Permits held by Mr.Shaik Kassim Shaik Suleman Kagal issued by the District Supdt. of Police, Kanara under the provisions of I.M.V.Act 1914 for the year 1939-40 were as follows :

Sirsi-Kumta route ---- Two stage carriages, vide pages flagged D, E and F in the register of limitation of services maintained by the office of the Dist. Supdt.of Police,Kanara. This application was rejected by the R.T.A. on 4-2-41. (Page 109).

Mr. Shaik Kassim Shaik Suleman Kagal had made a note at the end of his application(Page 61,62) as follows :

"The permit to issue must be in the name of Sayed Isac Sayed Budan to whom ownership of vehicles has been transferred"

It should be noted that transfer of permits had not been effected and this application of Mr.Shaik Kasim Shaik Suleman Kagal was treated as an application for a permit. This application was rejected by the Regional Transport Authority, vide Section 47 of the M.V.Act,1939.

The Regional Transport Authority, Belgaum has correctly and legally considered this case under the powers vested in it under the provisions of Rules 62 and 71(4) of the B.M.V.Rules,1940 and Section 47 of the M.V.Act IV of 1939. The plaintiff and Mr.Shaik Kassim Shaik Suleman Kagal submitted applications for permits under the provisions of Rule 62(1)(ii) and each of these applications was considered on its merits as separate claims for grant of permits under the provisions of B.M.V.Rules,1940 and M.V.Act IV of 1939. The plaintiff had no right to claim the permits issued to Mr.Shaik Kassim Shaik Suleman Kagal without a transfer being effected(Rule 71 of B.M.V.Rules,1940). Moreover, Even if it is conceded that a transfer was actually contemplated by the plaintiff, the Regional Transport Authority had acted rightly in treating the case under the provisions of Rule 71(4) and subsequently rejecting the application under Sec.47(c) of the M.V.Act,IV 1939. Applications of objections filed by interested operators of stage carriages are at pages 15 to 23, 33 to 42 and 99 to 104.

* In the plaint,plaintiff claims damages "for the last one year". He has not made it clear what is meant by that one year.

Rule 118(2)(c)(i).

11. Details of circumstances which laid to the Suit :

The plaintiff had applied on 17-6-40 for a stage carriage permit in respect of three stage carriages Nos.W 6107, T 6527, and W 2253 - two stage carriages for Sirsi-Kumta route and one stage carriage for Banwasi-Yellapur route(page 5 to 8). From records(i.e. pages flagged A, [illegible] and D in the register of "A" permits and limitation of services respectively) it was ascertained that the plaintiff had held only one valid permit granted by the District Supdt. of Police

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Police,Kanara in respect of vehicle No.W- 6107 for Sirsi-Kumta route for the year 1939-40 and that the permit in respect of M.V.No. T- 6527 was issued by the -- District Supdt.of Police, Kanara to one Mr.Shaik Kassim Shaik Suleman Kagal of Sirsi for operating it on Sirsi-Kumta route and that the vehicle No. W- 2253 was not -- covered ~~any~~ by any permit at all. In the circumstances, the Regional Transport -- Authority at its meeting held on 6-9-40 granted the plaintiff a permit in respect of ~~of~~ his own stage carriage only for Sirsi-Kumta route and rejected his application for permit for Banvasi-Yellapur route as he did not hold a permit issued by the -- District Supdt.of Police for the year 1939-40 to operate the route. The decision regarding permit in respect of the second vehicle on Sirsi-Kumta route was held in abeyance pending enquiries in the matter for the following reasons :-

At the time of the hearing of his application on 6-9-40, the plaintiff represented that although the permit in respect of M.V.No. T-6527 stood in the name of Mr.Shaik Kassim Shaik Suleman Kagal, the service was actually being operated by the plaintiff on behalf of Mr.Shaik Kassim Shaik Suleman Kagal. The Regional Transport Authority decided that enquiries should be made through the District Supdt.of Police as to whether Mr.Shaik Kassim Shaik Suleman Kagal had any interest in the service and if so,he(Mr.Shaik Kassim Shaik Suleman Kagal) should be granted a permit and if he had no interest, the plaintiff's application should be treated as an application for a fresh permit and that it should be decided on its merits vis-a-vis the other existing operators on the route(page 29). Accordingly on 12-10-40 the District Supdt.of Police, Kanara was requested to have enquiries made and report whether Mr.Shaik Kassim Shaik Suleman Kagal had any interest in the service and if so, the D.S.P. was requested to ask him to apply for the permit in form P St S A (Page 47). On 22-10-40, the District Supdt. of Police merely forwarded the statement dated 22-10-40 made by Mr.Shaik Kassim Shaik Suleman Kagal in which Mr.Shaik Kassim Shaik Suleman Kagal stated that he had handed over the sole ~~the~~ management of his services on Sirsi-Kumta route to the plaintiff and that he depended for the livelihood of his family on the earnings of the service(pages 53 to 56 Mr. Shaik Kassim Shaik Suleman Kagal also applied in form P St S A dated 22-10-40 for permit in respect of three vehicles for the Sirsi-Kumta route without giving the -- description of the vehicles. On the same application, Mr.Shaik Kassim Shaik Suleman Kagal requested that the permit should be issued in the name of the plaintiff to whom, he stated, ownership of vehicles had been transferred by him.(Pages 61 and 62). While forwarding the application dated 22-10-40, in form P St S A filled in by Mr.Shaik Kassim Shaik Suleman Kagal, the plaintiff in his letter dated 22-10-40(page 51) stated that Mr.Shaik Kassim Shaik Suleman Kagal was

was financially indebted to him for all his vehicles and that he (Mr.Shaik Kassim Shaik Suleman Kagal) was unable to maintain any service except through him(the plaintiff). On the same letter(page 51), Mr.Shaik Kassim Shaik Suleman Kagal confirmed the statements made by the plaintiff.

Later, the then Regional -- Transport Officer put up the plaintiff's application for a permit for the second vehicle for the Sirsi_Kumta route for -- re-consideration by the Regional Transport Authority on 3-12-40. The Regional Trasport Authority being convinced that Mr.Shiak Kassim Shuleman Kagal was not in a position to maintain a service, decided that Mr.Shaik Kassim Shaik Suleman having no interest, the plaintiff's application for permit for the additional stage carriage No.T- 6527 (BYX 786) should be considered as a fresh application for permit and as the route was sufficiently served by the existing operators rejected the application(page 79)vide section 47(c),M.V.Act IV of 1939.

Mr.Shaik Kassim Shaik Suleman Kagal's application for permit in respect of three vehicles for Sirsi-Kumta route was subsequently heard on 4-2-41 and rejected as he had no interest in the business and als the route was adequately served by the existing operators. (Section 47 of M.V.Act IV of 1939). (Page 109).

Later, on 4-11-41, the plaintif filed a suit in the Subordinate Judge's Court, at Sirsi against Mr. Shaik Kassim Shaik Suleman Kagal for a declaration that the ownership of M.V.Nos.BYX 786(T- 6527), the right for the Sirsi-Kumta route and all the goodwill of Mr.Shaik Kassim Shaik Suleman Kagal in motor business were transferred to him(the plaintiff), on 8-4-40. It appears that this suit was compromised and a decree was passed in terms thereof.

After obtaining this decree the plaintiff again applied in form P St S A dated 24-12-41 for permits in respect of three buses for Sirsi-Hubli and Sirsi-Kumta routes, (page 153 to 156). He was then informed through his pleader Mr.S.L.Sonde,Sirsi that as the Regional Transport Authority had already rejected the application for permits for the two additional vehicles, nothing could be done in the matter and that he may appeal to the Provincial Transport Authority against the orders of the Regional Transport Authority if so advised(Page 165). He then filed an appeal which was heard by the Provincial Transport Authority on 27-3-42 and dismissed. (Pages 187 to 189).

Rule 118(c)(ii)&(iii).

12. It is proposed that the Suit should be defended for the following reasons:

1) The plaintiff cannot claim a permit in respect of a vehicle or vehicles for which Mr.Shaik Kassim Shaik Suleman Kagal had a permit on Sirsi-Kumta route --

as the --

as the alleged transfer of permit was only a private business transaction between the plaintiff and Mr.Shaik Kassim Saik Suleman Kagal without any legal sanction for transfe as required under the M.V. Act and Rules (Rule 71, B.M.V.Rules,1940).

ii) The plaintiff had originall applied to the Regional Transport Authority for a permit in respect of an additional vehicle for which Mr.Shaik Kassim Shaik Suleman Kagal had held a permit for Sirsi-Kumta route only. In the Suit he claims grant of permit for two buses for Sirsi-K..... route and one bus for Kumta-Sirsi-Hubli route.

iii) The Regional Transport Authority had taken a correct decision in refusing permit for an additional bus for Sirsi-Kumta route to the plaintiff(Section 47 M.V.Act IV of 1939).

iv) The powers vested in the Regional Transport Authority under Rule 62 and Rule 71(4) of the B.M.V.Rules,1940 and Section 47 of the M.V.Act IV of 1939 were rightly and properly exercised in the case.

v) There is documentary proof to support the case that the plaintiff held a permit for one stage carriage only under the provisions of the I.M.V.Act,1914 and rules framed thereunder and that Mr.Shaik Kassim Shaik Suleman Kagal also held a separate permit for two stage carriages only. The plaintiff's claim to the permit held by Mr.Shaik Kassim Shaik Suleman Kagal is nottenable as no transfer of the permit had been effected by the Regional Transport Authority.

The following documents can be relied on for the defence :-

1) The plaintiff's and Mr.Shaik Kassim Shaik Suleman Kagal's application dated 17-6-40 and 22-10-40 for permits respectively (pages 5 to 8 and 61,62 respectively).

2) The entries in the register of public motor owners("A" permits) for 1939-40 maintained by the District Supdt.of Police, Kanara, vide pages flagged A,B and C.

3) The entries in the register of limitation of services for the year 1939-40 maintained by the D.S.P.,Kanara's office vide pages flagged D,E. and F.

4) The notifications issued by the Regional Transport Authority, Belgaum from time to time under Rule 62(1) of the B.M.V.Rules,1940(pages

5) Letter dated 11-10-39 from M/s The Commercial Credit Corporation Ltd.,Bombay addressed to the Superintendent of Police, Motor Vehicles Dept., Bombay page 65.

6) Letter dated 22-10-40 from M/s Sayed Isac Sayed Budan of Sirsi and Shaik Kassim Shaik Suleman of Kagal, addressed to the Regional Transport Officer, Karnatak Region, Belgaum,Page 51.

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7) The decisions of of the Regional Transport Authority, Karnatak Region, Belgaum on 6-9-40 and 3-12-41 in respect of the application for permits submitted by the plaintiff (Pages 29 and 79) and 24-2-41 in respect of the application submitted by Mr. Saik Kashim Shaik Suleman Kagal (Page 109).

8) Letter dated 3-12-40 from Mr. Shaik Kassim Shaik Suleman Kagal of Sirsi addressed to the Secretary, Regional Transport Authority, Karnatak Region, Belgaum. (Page 81 to 84).

9) Order dated 6-4-42 passed by the Provincial Transport Authority, Bombay in the appeal filed by the plaintiff (Pages 187 to 189).

Rule 118(d).

13. The documents referred to in para 12 above, are forwarded herewith.

Rule 118(e).

14. All the correspondence and written proceedings are also sent herewith (pages 1 to 202).

15. A statement in English of all the documents submitted is attached.

Your obedient servant,

Secretary,
Regional Transport Authority,
Karnatak Region, Belgaum.

DPS.

Forwarded with compliments through the Secretary, Provincial Transport Authority, Secretariat, Bombay with reference to his letter No. S-6/246 dated 13-8-1945 addressed to the District Govt. Pleader, Karwar and copy sent to this office.

STATEMENT OF DOCUMENTS SUBMITTED WITH THE REPORT.

1) Letter dated 17-6-40 from Mr.Sayed Isac Sayed Budan, Sirsi, forwarding his applications dated 17-6-40 in form P St S A and suggesting time table for the routes (Pages 3 to 10).

2) Office Notices.(Pages 11 to 14).

3) Applications from interested parties putting forth objections against applications for permits submitted by Mr.Sayed Isac Sayed Budan of Sirsi(Pages 15 to 24).

4) Office Notes (Pages 25 to 28).

5) True copy of the minute No.3(6) of the meeting No.5 of the R.T.A. held on 6-9-40(Pages 29 to 30).

6) Affidavit made by Mr.Sk.Kassim Sk.Suleman Kagal of Sirsi before the Magistrate I class, Sirsi(Page 31-32).

7) Applications from interested parties putting forth objections against applications for permits submitted by Mr.Sayed Isak Sayed Budan of Sirsi(Pages 33 to 42).

8) Office Notes (Pages 43 to 46).

9) This office letter No.6571/4-A/KR of 12-10-40 addressed to the D.S.Pl,Kanara. Pages 47 to 48).

10) This office letter No.6564/4-A/KR of 12-10-40 addressed to Mr.Sayed Isac Sayed Budan, Sirsi(Pages 49 to 50).

11) Letter dated 22-10-40 from M/s Sayed Isak Sayed Budan and Saik Kassim Shaik Suleman Kagal addressed to the Regional Transport Officer,K.R., Belgaum (Pages 52 and 52).

12) Letter No.59-C of 22-11-40 from the D.S.P.,Kanara addressed to the Regional Transport Officer,Karnatak Region, Belgaum forwarding statement dated 22-10-40 made by Mr.Shaik Kassim Shaik Suleman Kagal(Pages 53 to 56).

13) Office Notes (pages 57 to 60).

14) Application dated 22-10-40 in form P St S A submitted by Mr.Shaik Kassim Shaik Suleman Kagal of Sirsi(Pages 61 to 62).

15) Letter dated 27-9-39 addressed to the Registration Authority, M.V.Dept., Bombay by Mr.Shaik Kassim Shaik Suleman Kagal and reference No.6357/SDP dated 11-10-39 addressed to the Superintend-nt of Police,Motor Vehicles Dept., Bombay by M/s The Commercial Credit Corporation Ltd., Bombay regarding seizere of M.V.No.K 3534 (Pages 63 to 66).

16) Letter dated 27-11-40 from M/s G.C.Deshpande & Sons, Belgaum addressed to the Regional Transport Authority,K.R., Belgaum, regarding seizure of M.V.Nos. T 7913 and N 5484(Pages 67 to 68).

17) This office letter No.8190/4-A/KR of 28-11-40 addressed to Mr. Shaik Kassim Shaik Suleman Kagalkar asking him to attend the Regional Transport Authority's meeting at Bijapur on3-12-40 when his application for permit will be considered(Pages 69 to 70).

18) Telegram dated 3-12-40 from Mr.Shaik Kassim Shaik Suleman Kagal expressing his inability to attend the meeting at Bijapur (Pages 71 to 72).

19) Office Notes(Pages 73 to 78).

20) True copy of the minute No.7(iii)of the 9th meeting of the Regional Transport Authority held on 3-12-40(Pages 79-80).

21) Letter dated 3-12-40 from Mr.Shaik Kassim Shaik Suleman Kagal, addressed to the Secretary,Regional Transport Authority, Belgaum intimating that he has no interest in motor business(Pages 81 to 84).

22) Letter dated 12-12-40 addressed to the Secretary,Regional Transport Authority,Belgaum by Mr.Sayed Isac Sayed Budan, Sirsi(Page 85 to 88)

23) This office No.8980/4-A/KR dated 14-12-40 addressed to Mr.Shaik Kassim Shaik Suleman Kagal, Sirsi,asking him to See the Regional Transport Officer, at his camp at Balekeri on 16-12-40(Pages 89 and 90).

24) Letter dated 21-12-40 from Mr.Sayed Isac Sayed Budan, Sirsi addressed to the Commissioner, S.D., Belgaum(Pages 91 to 96).

25) Applications from interested parties putting for the objections to the application for permit submitted by Mr.Shaik Kassim Shaik Suleman Kagal of Sirsi (Pages 97 to 102).

P.T.O.

26) Office Notes (Pages 103 to 104).

27) This office letter No.553/4-A/KR dated 13-1-41 asking M/s Sayed Isac Sayed Budan and Shaik Kassim Shaik Suleman Kagal to see the Regional Transport Officer at Belgaum on 17-1-41.

28) This office letter No.1392/4-A/KR dated 22-1-41 addressed to the D.S.P.,Kanara requesting him to make enquiries as to whether Mr. Shaik Kassim Shaik Suleman Kagal had any interest in motor business(Pages 107 to 108).

29) This office letter No.2627/4-A/KR dated 25-2-41 informing Mr.Shaik Kassim Shaik Suleman that his application for permit has been rejected.

30) Two letters dated 17-6-41 from Mr.Shaik Kassim Shaik Suleman Kagalkar addressed to this office and informing that he has no concern whatsoever with the vehicle No.BYX 786 etc(Pages 111 to 114).

31) Office notes (Pages 115 to 118).

32) Letter dated 12-3-40 from M/s G.C.Deshpande,Mr.Shaik Kassim Shaik Suleman Kagal and Mr.Sayed Isac Sayed Budan,Sirsi addressed to the D.S.P.,Kanara regarding transfer of ownership of the vehicle No.T 6527(Pages 119 to 120).

33) TO form dated 11-8-41 for transfer of ownership of M.V.No. BYX 786 to Mr.Sayed Isac Sayed Budan(Page 121-122).

34) Office notes(Pages 123 to 126).

35) This office letter No.15010/4-A/KR dated 4-9-41 addressed to Mr.Sayed Isac Sayed Budan of Sirsi asking him to explain why he is operating bus No.BYX 786 for which he holds no permit(Pages 127-128).

36) Letter dated 12-9-41 from Mr.Sayed Isac Sayed Budan in reply to this office No.15010/4-A/KR dated 4-9-41(Pages 129-134).

37) Office Notes(Pages 135 to 136).

~~38) This office letter No.17180/4-A/KR dated 15-10-41 from Mr.Sayed Isac Sayed Budan asking for copy of R.T.A.'s decision on his application for permit(Pages 139-140).~~

~~39) Letter dated 29-10-41~~

38) This office letter No.17180/4-A/KR dated 15-10-41 addressed to the D.S.P.,Kanara(Pages 137 to 138)

39) Letter dated 29-10-41 from Mr.Sayed Isac Sayed Budan asking for copy of R.T.A.'s decision on his application for permit(Pages 139-140).

40) This office letter No.18012/4-A/KR of 5-11-41 supplying him the copy of R.T.A.'s decision on 6-9-40 in connection with his application for permit(Pages 141 to 142).

41) Letter dated 12-11-41 from Mr.Sayed Isac Sayed Budan to this office asking for petrol ration for 3 vehicles (Pages 143-144).

42) This office letter No.18819/4-A/KR dated 19-11-41 in reply to Mr.Sayed Isak's letter dated 12-11-41. (Pages 145-146).

43) This office endorsement No.18878/4-A/KR dated 20-11-41 to the D.S.P.Kanara, requesting him to ask Mr.Sayed Isac Sayed Budan to stop operating his bus No.BYX ~~786~~ 1138 on Kumta-Hubli route as he has no permit to do so (Pages 147 to 148).

44) Application dated 24-12-41 from Mr.S.L.Sonde,Advocate of Sirsi on behalf of his client Mr.Sayed Isac Sayed Budan forwarding copy of decree passed by the Subordinate Judge,Sirsi, in Civil Suit No.384-41 and application dated 24-12-41 in form P St S A for permits for Sirsi-Hubli and Sirsi-Kumta route submitted by Mr.Sayed Isac Sayed Budan(Pages 149 to 160).

45)Office notes(Page 161 to 164).

46) This office letter No.704/4-B/KR dated 24-1-42 in reply to Mr.S.L.Sonde's application dated 24-12-41(Pages 165 to 166.).

47) Letter No.S-6/246 dated 31-1-42 from the Secretary,Provincial Transport Authority,Bombay asking whether Mr.Sayed Isac Sayed Budan had been informed of the R.T.A.'s decision regarding his application for permits(Pages 167 to 168).

48) Office notes(Pages 169 to 170).

49) This office letter No.1490/4-T/KR dated 18-2-42 in reply to the letter No.S-6/246 dated 31-1-42 from the Secretary,Provincial Transport Authority,Bombay (Pages 171 to 174).

50) Letter No.S-6/246 dated nil addressed to Mr.Sayed Isac Sayed Budan Sirsi, and copy sent to this office informing the date and forwarding a copy of the appeal memorandum to this office of hearing his appeal(pages 175 to 178).

51) This office letter No.2727/4-T/KR/246 dated 30-3-42 informing the interested operators the date of hearing of the appeal by the Provincial Transport Authority(pages 179 to 180).

52) This office letter No.2771/4-T/KR/246 of 23-3-42 informing the Secretary, Provincial Transport Authority, the circumstances which led to the appeal and commenting on the points raised in the appeal memorandum(Pages 181 to 186).

53) Order dated 6-4-42 passed by the Provincial Transport Authority in the appeal (Pages 187 to 190).

54) This office letter No.3846/4-T/KR/246 dated 30-4-42 informing Mr.Sayed Isac Sayed Budan and the other interested operators on the routes of the dismissal of the appeal(Pages 191 to 192.).

55) Notice of Suit dated 6-12-44 under Section 80 of the Civil Procedure Code(Pages 193-194).

56) Copy of Summons dated 30-7-45 served on the Dist.Government Pleader Kanara(Pages 195 to 196).

57) Copy of the plaint dated 13-6-45(Pages 197 to 200).

58) Copies of Notifications under Rule 62 of the B.M.V.Rules,1940 by the Secretary, Regional Transport Authority,Karnatak Region, Belgaum(Pages 201 to 202)

59) Register of Public Motor Owners(A permits) for the year 1939-40 maintained by the District Supdt.of Police,Kanara.

60) Register of Limitations maintained by the Dist.Supdt.of Police, Kanara.

Secretary,
Regional Transport Authority,
Karnatak Region, Belgaum.

DPS.

Kanara Civil Suit No. 113 of 1945.

In 1940 the plaintiff applied in the prescribed form to the Regional Transport Authority, Belgaum, for permit for three stage carriages (Nos. W.6107, T 6527 and W 2253), two of them being for the Sirsi-Kumta route and one for the Banvasi-Yellapur route. It was noticed that for the year 1939-40 the plaintiff held permit for only one vehicle (No. W 6107) on the Sirsi Kumta route while the permit in respect of vehicle No. T 6527 was in the name of one Shaik Kassim Shaik Suleman Kagalkar for the same route and in the same year. Vehicle No. W 2253 did not appear to be covered by any permit. At the time of hearing of the application, the plaintiff is reported to have represented to the Regional Transport Authority that he was the transferee of and was operating the motor bus service formerly conducted by Shaik Kassim on the Sirsi Kumta route. On 6th September 1940, the Regional Transport Authority decided to grant permit for one stage carriage on the Sirsi Kumta route, and rejected the application for the Banvasi-Yellapur route. The application for permit for two extra vehicles formerly run by Shaik Kassim was held in abeyance pending the result of the Police inquiry as to whether Kassim held any interest in those buses. On 22.10.1940 plaintiff made an application to the Regional Transport Officer stating that he was a legal transferee of the services and routes held by Shaik Kassim and therefore the permits for the three vehicles on the Sirsi Kumta route formerly held by Kassim should be transferred to him. This was accompanied by another application in prescribed form from Shaik Kassim for permit for three vehicles on the said route to be issued in the name of the plaintiff to whom the ownership of the vehicles had been transferred. At its subsequent meeting held on 3.12.1940 the Regional Transport Authority rejected the application for the extra buses on th

Sirsi Kumta route on the ground that no extra buses were necessary on the route. As Shaik Kassim was found unable to continue the service the plaintiff's application was treated as a fresh application and rejected for the aforesaid reason. In November 1941 the plaintiff filed a suit in the Sirsi Court against Shaik Kassim for a declaration that he was a legal transferee of the motor buses and the rights and goodwill of the service formerly conducted by Shaik Kassim. The suit resulted in a consent decree. Thereafter he appealed to the Provincial Transport Authority against the decision of the Regional Transport Authority but the appeal was dismissed and hence the suit. The plaintiff's case in a nutshell is that as he is a transferee of the business from Shaik Kassim the transport authority is bound to transfer in his name the permits formerly held by Shaik Kassim. He tries to support this case by consent decree obtained against Shaik Kassim.

The suit is misconceived. Under the Motor Vehicles Act, 1939 and the Rules thereunder, the Regional or the Provincial Transport Authorities have full discretion either to grant or refuse an application for permit or transfer of a permit held by another person. Section 47 of the Act enumerates the matters to which regard must be had in granting or refusing a stage carriage permit. The plaintiff's application was rejected on the ground that the existing service on the Sirsi Kumta route was adequate. The transfer of permit by Shaik Kassim was invalid for want of permission under section 59. If the plaintiff was not satisfied with the decision, his only remedy was by way of appeal (vide section 64 of the Act and Rules 75 and 76 of the Bombay Motor Vehicles Rules, 1940).† There is no provision for the institution of such a suit. The jurisdiction of the Civil Court therefore appears to be impliedly barred under section 9 of the Civil Procedure Code.

On merits the decision of the Regional and Provincial

† Local Rules & Orders Vol V p 354

Transport Authorities is correct. The plaintiff is not entitled to declaration, mandatory injunction or damages.

Sanction for the defence may be accorded on the lines of the appended brief. A draft written statement is put up for approval.

RM
20/10/45

A.L.R. RK 22/10
R.L.A. Recd 4/11/45

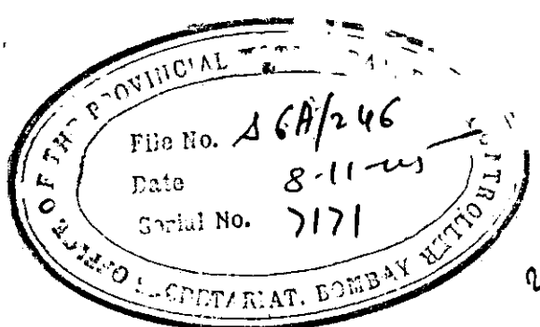
Secy. Prov. T.A. No. 8296 dt 8th Nov 1945

P.T.Office.

Seen and returned with compliments.

15/

Secy.,P.T.A.



Gov. G & D. No. S-6A/246, dt. 15th November 1945.

A
19/11

2757

In the Court of the Civil Judge, Senior Division, Karwar.

Civil Suit No. 113 of 1945.

Sayad Isac Sayad Budan ..... Plaintiff.

Vs.

1. The Province of Bombay.
2. The Regional Transport Board, Belgaum.
3. The Provincial Transport Authority, Bombay.) Defendants.

Written statement on behalf of the defendants is as follows :-

1. The plaintiff's claim is denied in toto.

2. Under the Motor Vehicles Act IV of 1939, and the Rules thereunder made by Government, the granting or refusing of an application for stage carriage permit or for transfer of a permit held by one person to another person is in the absolute discretion of the transport authority constituted under the Act. If, in the exercise of that discretion the Regional Transport Authority has decided to refuse plaintiff's application for additional permits on the Sirsi-Kumta route, the plaintiff's only remedy is by way of appeal to the Provincial Transport Authority or to the Provincial Government. Subject to such appeal the decision of the transport authority is final and the plaintiff is not entitled to ask the civil court to substitute its own discretion for that of the transport authority. The suit is therefore misconceived and not maintainable.

3. The defendants further submit that there is no provision either in the Act or in the Rules for the institution of such a suit by a party aggrieved by the order of the transport authority. The only remedy is by way of appeal. The jurisdiction of this court to entertain this suit is therefore impliedly barred under section 9 of the Civil Procedure Code.

4. The allegations in paragraph 1 of the plaint are incorrect and misleading and hence denied. Shaik Kassim Shaik

Suleman did not hold any permit on the Kumta-Sirsi Hubli Road as alleged. For the year 1939-40 he held permits for two vehicles on the Sirsi-Kumta Road viz. Nos. T 6527 and K 3534. Of these the latter was seized by the Commercial Credit Corporation Ltd. Bombay for Shaik Kassim's default in the payment of instalments under the hire purchase agreement.

5. The defendants do not admit the alleged transfer by Shaik Kassim of his rights and goodwill in these routes and the motor vehicles to plaintiff. At all events this transfer was a private transaction effected without the permission of the transport authority and hence in contravention of the provisions of the Motor Vehicles Act and the Rules thereunder. It being thus illegal, neither Regional nor the Provincial Transport Authority was bound to recognise it.

6. With regard to the decree obtained by plaintiff against Shaik Kassim in Sirsi Suit No. 384 of 1941, it is submitted that it was a collusive decree because (1) the suit was filed long after the decision of the Regional Transport Authority refusing the plaintiff's application and (2) there was no conflict of interest between plaintiff and Shaik Kassim and hence no cause of action for the suit. Moreover Government was not a party to the suit and cannot therefore be bound by the decree. It is therefore of no assistance to the plaintiff.

7. With regard to the allegations in paragraph 2 of the plaint the defendants submit that the plaintiff's application for transfer of permits held by Shaik Kassim was rightly rejected by the Regional Transport Authority and also in appeal by the Provincial Transport Authority. His contentions to the contrary are incorrect and denied.

8. The defendants do not admit that the appeal was

rejected without giving the plaintiff an opportunity of placing his case before the Provincial Transport Authority.

9. The allegations in paragraph 3 of the plaint are not admitted. There is no compulsion on the Regional Transport Authority to grant without exception every application for transfer of permits. It is a matter entirely in the discretion of the transport Authority. The plaintiff's application was rejected because Shaik Kassim was found to have no interest in the services run by him and because the authority thought that the existing service was adequate and any additional bus on the Sirsi Kumta route was not necessary. The Civil Court's decree was subsequent to this decision and is worthless as against Government who was not a party to it.

10. The claim for damage is untenable and misconceived and hence denied. The amount claimed by the plaintiff is also arbitrary and exaggerated. The plaintiff is put to strict proof of the same. None of the defendants is liable for any damages.

11. The plaintiff is not entitled in law to a mandatory injunction. The prayer for such an injunction is misconceived.

12. The Regional and Provincial Transport Authority (defendants Nos. 2 and 3) are neither necessary nor proper parties to the suit.

13. It is therefore submitted that the suit fails and must be dismissed with costs.

District Government Pleader, Kanara.

I, District Government Pleader, Kanara, do hereby declare that what is stated in paragraphs 1 to 13 above is true according to the information received and believed to be true. This verification is made

at on the lay of 1945.

District Government Pleader, Kanara.

Suits.

Kanara.

For (1) a declaration that the plaintiff is the legal transferee of the permits for two motor buses on the Sirsi-Kumta route and for one bus on the Kumta - Hubli - Sirsi route previously held by Shaik Kassim Shaik Sulman Kagalkar and that the order passed by defendants Nos. 2 and 3 refusing to recognise such transfer are - illegal (2) recove y of Rs. 995 as damages from the defendants for alleged illegal stoppage of his bus services for one year and (3) a mandatory injunction directing the defendants to transfer the aforesaid permits and route to the plaintiff.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No.
Bombay Castle, November 1945.

Letter from the Secretary, Regional Transport - ity, Karnatak Region, Belgaum No. 9177/4-T/K R/113 dated the 24th August 1945 -- Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

Court of the Civil Judge,
(S.D.) Karwar.
Civil Suit No. 113 of 1945.

Sayad Isac Sayad Budan .... Plaintiff;

versus.

(1) The Province of Bombay.
(2) The Regional Transport Board, Belgaum
(3) The Provincial Transport Authority, Bombay.

Endorsement by the Secretary Provincial - Transport Authority, Bombay, No. S.6/246, dated the 12th - September 1945 - Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Kanara No. 8581, dated the 17th November 1945 - Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION .- Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

For { P.N.MOOS,
Secretary to Government.

To
*, The Secretary, Provincial Transport Authority, Bombay.
* The Secretary, Regional Transport Authority, Karnatak Region, Belgaum.
The District Government Pleader, Kanara, (with two copies of the brief).

* With a copy of the brief.

LK.

Suits:

Kanara.

For (1) a declaration that the plaintiff is the legal transferee of the permits for two motor buses on the Sirsi-Kumta route, and for one bus on the Kumta-Hubli-Sirsi route previously held by Shaikh Kassim Shaikh Suleman Kagalkar and that the order passed by defendants Nos. 2 and 3 refusing to recognise such transfer are illegal (2) recovery of Rs. 995 as damages from the defendants for alleged illegal stoppage of his bus services for one year and (3) a mandatory injunction directing the defendants to transfer the aforesaid permits and route to the plaintiff.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 8582.

Bombay Castle, 17th November 1945.

Letter from the Secretary, Regional Transport Authority, Karnatak Region, Belgaum, No. 9177/4-T/K R/113, dated the 24th August 1945—Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (Senior Division), KARWAR.

Civil Suit No. 113 of 1945.

Sayad Isac Sayad Budan ... ... Plaintiff;

versus

(1) The Province of Bombay.
(2) The Regional Transport Board, Belgaum.
(3) The Provincial Transport Authority, Bombay.

Endorsement by the Secretary, Provincial Transport Authority, Bombay, No. S. 6/246, dated the 12th September 1945—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Kanara, No. 8581, dated the 17th November 1945—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. N. MOOS,
Secretary to Government.

G. R., L. D., No. 8582, dated the 17th November 1945.

To

*The Secretary, Provincial Transport Authority, Bombay.
*The Secretary, Regional Transport Authority, Karnatak Region, Belgaum.
The District Government Pleader, Kanara (with two copies of the brief).

*With a copy of the brief.

No. of 1946.

Copy forwarded for information and guidance to

KANARA CIVIL SUIT-NO. 113 OF 1945.

Chronological Statement of Facts.

1. The suit is filed against (1) the Province of Bombay (2) the Regional Transport Authority, Belgaum and (3) the Provincial Transport Authority for (1) a declaration that the plaintiff is the legal transferee of the permits for two motor buses on the Sirsi-Kumta route and for one bus on the Kumta-Hubli-Sirsi route previously held by Shaik Kassim Shaik Suleman Kagalkar and that the orders passed by defendants Nos. 2 and 3 refusing to recognise such transfer are illegal, (2) recovery of Rs. 995 as damages from the defendants for alleged illegal stoppage of his bus services for one year, and (3) a mandatory injunction directing the defendants to transfer the aforesaid permits and route to the plaintiff.

pp. 5-7 file. 2. On 17th June 1940, the plaintiff applied in the prescribed form to the Regional Transport Authority, Belgaum for permit for three stage carriages, bearing Nos. W 6107, T 6527, and W 2253, two of them being for Sirsi-Kumta route and one for the Banvasi-Yellapur route. The Regional Transport Officer, Belgaum received representation from several persons against the plaintiff's application.

pp. 15-23 do. 3. From the Register of Public Motor Owners ("A" permits) for the year 1938-40 and the Register of Limitation of Services, it was ascertained that the plaintiff held only one valid permit for motor vehicle No. W 6107 on the Sirsi-Kumta route for the year 1939–40, while the permit in respect of motor vehicle No. T 6527 had been issued in the name of one Shaik Kassim Shaik Suleman Kagalkar for the same route and in the same year. No

p. 65 do. permit appeared to have been issued in respect of motor vehicle No. 2253.

4. At the time of the hearing of his application, the plaintiff appears to have represented to the Regional Transport Authority that although the permit in respect of motor Bus No. 6527 stood in the name of Shaik Kassim, the service was actually being managed and operated by the plaintiff. In the Register of "A" permits Shaik Kassim was shown to be the holder of a permit for motor vehicle No. K 3534 which he had taken on hire from the Commercial Credit Corporation Ltd., Bombay but which had been seized by the said Corporation on 27th September 1939 for default by Shaik Kassim in payments.

p. 29 do. 5. In these circumstances, the Regional Transport Authority at its meeting held on 6th September 1940 granted to the plaintiff permit for one bus on the Sirsi-Kumta route and rejected the application for permit in respect of the Banvasi-Yellapur route. It was also decided to refer to the District Superintendent of Police, Kanara, the application for permit for two extra buses formerly run by Shaik Kassim, for inquiring whether he had any interest in the buses. The meeting also decided that permit would be given if Kassim had such interest, and if he had none, the application should be treated as a fresh one to be decided on merits.

p. 47 do. 6. On 12th October 1940, the District Superintendent of Police, Kanara, was requested by the Regional Transport Officer to make the aforesaid inquiry and if necessary, to ask Shaik Kassim to apply for permit in the prescribed form.

p. 53 do.
p. 55 do. 7. On 22nd November 1940, the District Superintendent of Police merely forwarded a statement of Shaik Kassim. Therein, Shaik Kassim stated *inter alia* that he had been plying two buses No. T 6527 and K 3534 on the Sirsi-Kumta route, that due to want of money and illness he had returned bus No. K 3534 to the company, that plaintiff's bus No. W 6107 was running in the timings allotted to bus No. 3534, that he had asked the plaintiff who was related to him to manage his services on the Sirsi-Kunta route and had given the sole management of that route in his hands and informed the Regional Transport Officer about it.

8. On 22nd October 1940, the plaintiff wrote a letter to the Regional Transport Officer stating that he was "the lawful owner of the ..... services and routes owned" by Shaik Kassim who was indebted to him and unable to maintain the services. This letter was accompanied by an application of the same date from Shaik Kassim in the prescribed form for permit to run three carriages on the Sirsi-Kumta route. It did not mention the numbers or description of the motor vehicle and contained a statement at the end of the form that the permit should be issued in the plaintiff's name to whom the ownership of the vehicles had been transferred. p. 51, file

p. 61, do.

9. On 3rd December 1940, the meeting of the Regional Transport Authority decided that Shaik Kassim being unable to continue the services, plaintiff's application should be treated as a fresh one. The Board considered that extra buses were not required on the Sirsi-Kumta route and the application for the two extra buses was therefore rejected. p. 79, do.

10. On 29th January 1941, the Regional Transport Officer requested the District Superintendent of Police for making careful inquiries into the interest, if any, of Shaik Kassim in the two vehicles plied by the plaintiff. p. 107, do.

11. On 25th February 1941, the Regional Transport Officer informed Shaik Kassim that his application for a permit to operate three stage carriages on the Sirsi-Kumta route had been rejected on 4th February 1941, on the ground that he had no interest in the service and that the existing service on the route was adequate. p. 109, do.

12. It appears that on 4th November 1941, the plaintiff filed in the Civil Court of Sirsi Suit No. 384 of 1941 against Shaik Kassim for a declaration that the ownership of motor vehicle No. BYX 786 (T 6527) and the right and goodwill to ply the same on the Sirsi-Kumta route had been legally transferred to him. The suit appears to have resulted in a consent decree passed on the 3rd December 1941. pp. 157-159 do.

13. On the strength of this decree the plaintiff again applied on 24th December 1941 for permit for three stage carriages on the Sirsi-Kumta and Sirsi-Hubli route. On 24th January 1942, he was informed that the Regional Transport Authority had rejected his application for permit for two additional vehicles and that he should have appealed to the Provincial Transport Authority if he was dissatisfied with the decision. pp. 149-153 do.

p. 165, do.

14. The plaintiff then preferred an appeal to the Provincial Transport Authority. On 6th April 1942, the appeal was dismissed by that Authority. pp. 175-177 do.

pp. 187-189 do.

15. On 6th December 1944, the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 21st June 1945 (or 14th July 1945)* the suit was filed in the Court of the Civil Judge, Senior Division, Karwar.

Grounds of Defence.

1. *Suit not maintainable.*—(*a*) The plaintiff seeks to obtain a declaration that he has taken a valid transfer of permits formerly held by Shaikh Kasim to ply two stage-carriages on the Sirsi-Kumta route, and one on the Kumta-Sirsi-Hubli route, and that as such transferee he has a right to ply these vehicles on the two aforesaid routes. It should be contended in the first place, that the suit is misconceived and not maintainable. It is clear from the relevant provisions of the Motor Vehicles Act (IV of 1939), and the Rules thereunder made by the Provincial Government, that the granting or refusing of an application for stage carriage permit is in the discretion of the appropriate authority constituted under the Act, and that discretion cannot be challenged or set aside by means of a decree of a Civil Court. Under section 42 of the Act, it is necessary for the owner of a transport vehicle to obtain a permit

*The District Government Pleader should verify which of the two dates is correct.

signed by the Regional or Provincial Transport Authority for the use of the vehicle in any public place. Such permit can be granted only after an application in that behalf has been made to the Regional Transport Authority. Section 47 empowers a Regional Transport Authority to decide whether to grant or refuse a stage carriage permit having regard to certain specified matters. Under sub-section (1) clause (c) one of such matters to which regard must be had is the adequacy of existing road passenger transport services between the places to be served, the fares charged by those services, and the effect upon those services by the services proposed. If the Authority is of opinion that existing services on any particular route are adequate, it has an unfettered discretion to refuse application for a permit for additional services.

(*b*) Now when the plaintiff made his application dated 17th June 1940 for permit for two vehicles on the Sirsi-Kumta route, and one for the Banvasi-Yellapur route, he actually held in his own name a permit for only one stage carriage bearing No. W-6107 on the Sirsi-Kumta route, for the year 1939–40 (*vide* slip A in the Register of "A" permits and the Register of Limitation). The plaintiff did not hold permit for any other vehicle for this or other route in that year. For motor vehicle No. 6527 (now BYX 786) the permit for 1939–40 was held by Shaikh Kassim Shaik Suleman Kagalkar (*ibid* slips B and A). At its meeting, held on 6th September 1940, the Regional Transport Authority decided to grant to the plaintiff, permit for one stage carriage on the Sirsi-Kumta route in respect of vehicle No. W-6107, for which he had held a permit for 1939–40. As his application was for two extra buses on the same route formerly plied by Shaik Kassim, a reference was made to the District Superintendent of Police to inquire if Kassim had any interest in these vehicles. At its subsequent meeting, held on 3rd December 1940, the Regional Transport Authority found that Shaik Kassim was unable to continue the services. The Authority therefore treated the plaintiff's application as a fresh one and rejected it on the ground that the existing service was adequate and no extra vehicles were required on the Sirsi-Kumta route. This decision was confirmed by the Provincial Transport Authority in the appeal filed by the plaintiff. Section 64 (*a*) of the Act provides for appeals to the prescribed authority against an order refusing to grant a permit passed by the Provincial or the Regional Transport Authority. Appeal against the orders of the Regional Transport Authority lies to the Provincial Transport Authority, and there is provision for a further appeal to the Provincial Government against the orders of the Provincial Transport Authority (*vide* Rules 75 and 76 of the Bombay Motor Vehicles Rules, 1940). It is thus clear that the remedy of a party aggrieved by an order refusing the grant of permit is by way of appeal only. Subject to such appeal, the decision of the Regional or the Provincial Transport Authority must be regarded as final and it is not open to the plaintiff to ask the Civil Court to substitute its own discretion for that of the appropriate authority. Moreover, there is no provision either in the Act or in the Rule for the institution of a suit by a party aggrieved by any such order. It should, therefore, be urged that the jurisdiction of the Civil Court to entertain such suits is, under section 9 of the Civil Procedure Code, impliedly barred.

2. *Merits.*—On merits also, it is possible to uphold the validity of the order passed by the Regional Transport Authority and confirmed in appeal by the Provincial Transport Authority. In paragraph 1 of the plaint it is alleged that Shaik Kassim who held permit for running two buses on the Sirsi-Kumta road and one on the Kumta-Sirsi-Hubli road had transferred his rights and goodwill of these buses to the plaintiff. This contention is both incorrect and misleading and should be denied. As pointed out in paragraphs 3 and 4 of the Chronological Statement of Facts, Shaik Kassim held permit for two buses bearing Nos. T 6527 and K 3534 on the Sirsi-Kumta route for the year 1939. It has also been observed that the latter was

seized by the Commercial Credit Corporation Ltd., Bombay, for Shaik Kassim's default in payment of instalments under the hire-purchase agreement. He did not hold permit for any other vehicle on the Kumta-Sirsi-Hubli route during that year. As regards the alleged transfer of permits held by Shaik Kassim, it should be pointed out that this was a private transaction in contravention of the relevant provisions of the Motor Vehicles Act and the Rules thereunder and hence the Regional or the Provincial Transport Authority was not bound to recognise it. Section 59 of the Act enacts that permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit. Rule 71 of the Motor Vehicles Rules lays down the procedure to be followed when the holder of a permit desires to transfer the permit. Sub-rule (1) requires the transferor and the transferee to make a joint application to the transport authority by which the permit was granted setting forth the reasons for the proposed transfer. The plaintiff's application dated 17th June 1940 did not comply with the provisions of Rule 71 although it was in respect of a vehicle for which permit was held by Shaik Kassim. It was at the time of hearing of that application by the Regional Transport Authority that he represented that he was a transferee of two buses formerly plied by Shaik Kassim on the Sirsi-Kumta route. It was after the Regional Transport Officer has made the reference to the District Superintendent of Police, Kanara, that the plaintiff and Shaik Kassim made an attempt to comply with the requirements of Rule 71, the former by his application dated 22nd October 1940 which was accompanied by an application of the same date for permit in the prescribed form signed by Shaik Kassim. The latter had added at the end of his application that the permit should be issued in the name of plaintiff to whom the ownership of the vehicle had been transferred. Assuming that these two papers taken together could be regarded as the joint application for transfer under Rule 71, the grant or refusal of such an application is still in the discretion of the transport authority. Neither the Act nor the Rules contain any provision compelling that authority to grant without exception every application for the transfer of a permit, as the plaintiff appears to assume. This is clear from sub-rule (4) of Rule 71 which provides that the Regional Transport Authority may, if it deems fit, deal with the application for transfer as if it were an application for permit, and that being so, the authority has the discretion to grant or refuse an application for transfer of permit, in accordance with the provisions of section 47 of the Act (*vide* paragraph 1 (*a*) above). In the exercise of this discretion, the authority treated the application of the plaintiff as a fresh application and rejected it on the ground that the existing service on the Sirsi-Kumta route was adequate (*vide* proceedings held on 3rd December 1940). The application of Shaik Kassim was also rejected for the same reason at the meeting held on 4th February 1941. These decisions confirmed in appeal by the Provincial Transport Authority are valid and binding on the plaintiff and not liable to be set aside by a Civil Court (*vide* paragraph 1 (*b*) above). It should be urged in this connection that a transfer of ownership of the vehicle does not carry with it a transfer of permit to ply that vehicle on a particular route. The latter must be effected in accordance with the prescribed rules and regulations referred to above. The law does not give to the plaintiff an absolute right to have the permit held by the transferor transferred to him in consequence of the change of ownership. The contention as regards transfer of the permit is therefore untenable.

page 47, file.

page 51, do.

page 7, do.

page 109, do.

3. In support of his claim, the plaintiff relied on a decree obtained by him against Shaik Kassim in Civil Suit No. 384 of 1941 in the Civil Court of Sirsi. He filed the suit against Kassim on 4th November 1941 for a declaration that the ownership of motor vehicle No. BYX 786 (T 6527) and the right to ply the vehicle on the Sirsi-Kumta route had been

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transferred to him (plaintiff). The suit appears to have resulted in a consent decree in terms of the reliefs asked. There can be no doubt that this was a collusive decree because there was no conflict of interest between the plaintiff and Shaik Kassim and he had no cause to institute the suit. The suit was filed long after his application for transfer of permit had been rejected by the Regional Transport Authority on 3rd December 1940. Evidently the plaintiff has obtained this decree in the hope of using it as a piece of evidence in his favour and against Government. It should be pointed out that a permit held by one person can be transferred to another only in accordance with the statutory rules in that behalf and not by a Civil Court's decree to which Government was not even a party. The decree is of no value and does not advance the plaintiff's case any further.

4. The plaintiff has not been consistent in respect of vehicles for which he claimed a transfer of permits from time to time. In his first application dated 17th June 1940 he asked for permits for vehicles Nos. T 6527 and W 2253 in addition to one of his own *viz.* No. W 6107. Of the two former, only one *viz.* No. T 6527 was covered by a permit granted to Shaik Kassim. The other was not covered by any permit at all. His application dated 22nd October 1940 as also the application of Shaik Kassim of the same date did not state the registration numbers or the description of the motor vehicles in question. In his appeal before the Provincial Transport Authority he appears to have produced two permits in the name of Shaik Kassim one of which was for the Kumta-Sirsi route and the other for the Kumta-Sirsi-Hubli-Ketgal route. Now these permits were in respect of two vehicles being Nos. T 7913 and N 5484 which Shaik Kassim had taken under a hire purchase agreement from Messrs. G. C. Deshpande & Sons but which were seized by the firm on 5th March 1937 and 25th December 1938 respectively for default in the payment of monthly instalments (*vide* letter dated 27th November 1940 to the Regional Transport Authority). Moreover, the Provincial Transport Authority also noticed that the permits for these two vehicles had expired on 31st March 1939. Shaik Kassim had thus no interest in any of these vehicles with the exception of T 6527 (BYX 786) the ownership of which had been permitted to be transferred to plaintiff under the Rules. As the plaintiff had been granted permit for only one stage carriage on the Sirsi-Kumta route, he was allowed by the Regional Transport Officer to replace motor vehicle No. W 6107 (BYX 853) by vehicle No. BYX 786 (*vide* section 59 (*2*) of the Act and Rule 68). In the present suit the plaintiff has mentioned the number of only one vehicle *viz.* No. BYX 786 without stating the numbers of the two other vehicles in respect of which he asks for a declaration and damages. The omission appears to be deliberate and not accidental because the plaintiff must be conscious that Shaik Kassim had no interest in any other vehicle except the one which was transferred to him and which replaced another vehicle belonging to plaintiff himself. The relief sought in paragraph 5 (1) of the plaint is therefore vague and misleading because the plaintiff cannot claim to be a transferee of rights which his transferor did not possess. On this ground also the suit is misconceived and untenable.

p. 67, file.

pp. 119-121, do.

pp. 135-136, do.

5. *Damages.*—The orders passed by the Regional and the Provincial Transport Authority were legal and binding in law. The claim for damages is also misconceived and untenable. Moreover, the plaintiff has not stated how he arrived at the figure of Rs. 995 claimed by him. The

amount is arbitrary and exaggerated and should not be admitted.

6. *Mandatory injunction.*—The plaintiff is also not entitled to the prayer regarding mandatory injunction (*vide* plaint paragraph 5 (2)). Under section 55 of the Specific Relief Act, a Court has discretion to grant a mandatory injunction to compel the performance of such acts as the Court is capable of enforcing. The grant or refusal of a permit under the Motor Vehicles Act and the Rules thereunder is in the discretion of the prescribed authority which cannot be substituted by the discretion of the Civil Court. The Civil Court cannot therefore compel a transport authority to grant or transfer a permit. Moreover, a mandatory injunction is granted generally upon the same principle and subject to the same conditions as a perpetual injunction (*vide* Pollock and Mulla; Specific Relief Act 7th edition page 788). Under section 56 (*d*) an injunction cannot be granted to interfere with the public duties of any department of a Provincial Government, etc. The injunction sought would interfere with the public duties of the Provincial Transport Authority and cannot therefore be granted.

7. The Regional and the Provincial Transport Authorities have been wrongly impleaded in this suit. These are statutory bodies constituted under the Motor Vehicles Act for the performance of functions authorised under the Act and the Rules thereunder. It should be pleaded that these bodies are neither necessary nor proper parties to the suit and their names should be struck off.

Decree.

(O. 21 rr. 6,7).

In the Court of the Civil Judge, Senior Division,

At Karwar.

Exhibit no. 58.

Civil Suit No. 113 of 1945.

Mr. R.V.Gangolli. Sayad Isac Sayad Budan, age 38 years, trader, Mussalman of Sirsi. Plaintiff.

Vs.

1. The Province of Bombay,
(Notice served on the Collector of Kanara).
2. The Regional Transport Board having its office in Belgaum.
The Public Prosecutor Mr.M.G.Kasbekar for defendants.
3. The Provincial Transport Authority, Office in secretariat Building, Bombay... Defendants.

Claims. 1,000/-

Plaintiff begs to submit as follows:-

1. Mr. Shaik Kashim/Suleman Kagal of Sirsi held two valid permits to run his motors on Sirsi-Kumta Road and one permit on Kumta-Sirsi-Hubli Road from defendant no.2. He was running his motors under the management of plaintiff. But as Mr. Shaik Kashim could not profitably run the business he transferred his rights and good will of these routes and his bus to plaintiff. Plaintiff filed suit No. 388 of 1941 in the Sirsi Civil Court against Shaik Kashim, and obtained a declaration that plaintiff was a legal transferee of the routes and the motor bus no. BYX 786.

2. Plaintiff and Shaik Kashim applied to defendant no. 2 to the effect that the above routes and good will had been legally transferred to plaintiff by Shaik Kashim who consented to the transfer of these routes in plaintiff's name and issue of permit to plaintiff. But defendant no. 2 rejected the application, on the wrong notion and without proper inquiry that the application was for fresh routes and not for the transfer of already existing routes. Against this order plaintiff appealed to defendant no. 3 who on the bare report of defendant no. 2 and the District Superintendent of Police without giving plaintiff opportunity of placing his case rejected the appeal mainly on the ground that the permits of Shaik Kashim had expired on 31st March 1939 and had not been renewed thereafter. This was not correct as the permit was actually renewed till 31sy March 1940 by defednant no. 2. When considering the

application for renewal the fact that the permit was renewed till 31st March 1940 was entirely lost sight of by defendants nos. 2 and 3. Plaintiff was actually running his own buses on the routes of Shaik Kashim until he was stopped by defendants nos. 2 and 3, without any legal basis. Plaintiff has suffered heavy damages on account of his service having been stopped. He therefore claim damages for only the last one year though he has suffered heavily

3. Prior to the coming into existence of defendant no. 2 Mex Board the District Superintendent of Police had under orders of defendant no. 1 made a detailed list of services on different routes in Kanara district and on the basis of that list defendant no. 2 had issued permits for different routes to several operators. In that list of limitation of services Shaik Kashim Kagalkar held permits for the above three routes. These routes and permits could legally be transferred and such transfers have been recognised by defendant no.2. Such permits for routes could not legally be cancelled by defendant no.2. The opinion of defendant no. 2 that the joint application of plaintiff and Shaik Kashim to transfer the route to plaintiff's name was an application for a fresh route is wholly wrong and untenable. Plaintiff therefore was entitled to have the route transferred to his name as consented by Shaik Kashim. The Civil court decree which declared plaintiff's transfer as a legal transfer was wrongly ignored by defendants. Plaintiff therefore files this suit for declaration and injunction and damages.

4. Plaintiff therefore prays for a decree against defendants for the following reliefs.

(1) It be declared that plaintiff is a legal transferee of the permits on the routes of two Sirsi-Kumta Road and one Kumta-Sirsi-Hubli Road being routes nos. 14 and 22 held by Shaik Kashim Shaik Suleman Kagalkar and was therefore entitled to have these permits transferred to his name and that defendant no. 2 was legally bound to transfer the permits on these routes to plaintiff's name and that the orders of defendants nos. 2 and 3 refusing such transfer were wholly illegal and not binding on plaintiff and [illegible] that plaintiff be awarded damages from defendants for illegal stoppage of his service for the last one year only being Rs. 995-0-0

(2) That defendants being legally bound to transfer the permits on the above routes in Plaintiff's name they may be ordered by Mandatory injunction to transfer the permits and routes to plaintiff's name

B.O. 995-0-0

Valuation for court fees. 5-0-0

Total Rs. 1000-0-0

Costs of suit and such other reliefs as the circumstances of the case require from the defendants.

This suit coming on this day for final disposal before S.S. Tallur, Esquire, B.A.LL.B., Civil Judge, Senior Division, Karwar in the presence of Mr. R.V.Gangolli, pleader for the plaintiff and Mr. M.G.Kasbekar, the public prosecutor, Kanara, for the defendants it is ordered as follows:-

The suit is dismissed.

The plaintiff to pay defendants' costs (in one set) i.e. Rs. 51-4-0(fifty one ruppees and four annas) and bear his own.

Bill of costs.

Plaintiff.		Defendants.	
1. Stamp for plaint Ex.1.	95-12-0	1. Stamps for Exhs.9, 10,12,23,50 and 51.	3-12-0
2. Vakilpatra Ex. 3.	0-10-0	2. Pleader's fees.	50-0-0
3. Service of process Exhs.1,19.	10-6-0		
4. Copying fees Ex.47	2-0-0		
5. Stamps for exhs.5,14, 15,22,23A,24 and 47.	4-6-0		53-12-0
6. Pleader's fees.	50-0-0	Costs disallowed Exhs.9,10,12,23.	2-8-0
	161-2-0		
Costs disallowed. Exhs.5,14,15,22,23A and 24.	3-12-0		
	Rs. 157-6-0		51-4-0

Given under my hand and seal of the court this 10th day of June 1947.

Sd. S.P.Naik, Karkun.

Sd. S.S.Tallur,
Civil Judge, Senior Division,
27-6-1947. Karwar.

Plaintiff's pleader:- Sd. R.V.Gangolli.
Defendant's pleader:- Sd. M.G.Kasbekar.

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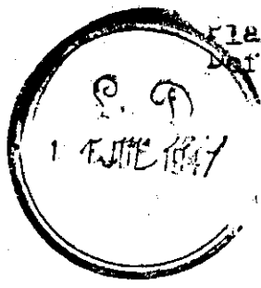

Received on - 21st June 1945.
Registered on - 14th July 1945.
Decided on - 10th June 1947.
Duration - - 1 year 11 months and 19 days.

IN THE COURT of the Civil Judge, Senior Division,

AT Karwar. Exhibit no.

Civil Suit no.113 of 1945.

Pleaders:
Mr. R.V.Gangolli.

Sayad Isac Sayad Budan, age 38, Trader, Musalman of Sirsi. Plaintiff

against

1. The Bombay Province, notice served on the Collector of Kanara.
2. The Regional Transport Board having its office in Belgaum.
3. The Provincial Transport Authority, office in Secretariat Building.

Defendants.

The Public Prosecutor, Kanara, Mr. M.G.Kasbekar.

Claim- Rs.1000/-.

The Plaintiff prays for a declaration that he is a legal transferee of the permits on the routes of two Sirsi-Kumta Road and one Kumta-Sirsi-Hubli Road being routes nos. 14 and 22 held by Shaik Kashim Shaik Suleman Kagalkar and was therefore entitled to have those permits transferred in his name and that Defendant no.2 was legally bound to transfer the permits on these routes to Plaintiff's name that the orders of Defendants nos. 2 and 3 refusing such transfer were wholly illegal and that Plaintiff be awarded from the Defendants damages of Rs.995/- for illegal stoppage of his services for the last one year and that the Defendants be directed by mandatory injunction to transfer the permits and routes to Plaintiff's name.

2. The Plaintiff's case is as follows:- Shaik Kashim Shaik Suleman Kagal of Sirsi held two valid permits to run his busses on Sirsi - Kumta Road and one on Kumta- Sirsi - Hubli road and that he was running his buses under the management of the Plaintiff. As said Kashim could not profitably run the business, he transferred his rights and

good-will of these routes and his bus to Plaintiff. Plaintiff filed Civil Suit no.384 of 1941 in the Civil Court, Sirsi, against Kashim and obtained a declaration that Plaintiff was a legal transferee of the motor routes and the motor bus no.BYA 786. Plaintiff and said Kashim applied to Defendant no.2 stating that the above routes and good-will had been legally transferreddby Kashim to Plaintiff and Kashim consented to said transfer. Defendant no.2 rejected the -- application without proper inquiry on the notion that the application was for fresh routes and not for the transfer of already existing routes. The Plaintiff appealed against this order to Defendant no.3 who on the bare report of the Defendant no.2 and of the District Superintendent of Police rejected the appeal mainly on the ground that permits of Kashim had expired on 31st March 1939. The Plaintiff was not given an opportunity of placing his case. This was not correct as the permit was actually renewed till 31st March 1940. Plaintiff was -- actually running his own buses on the routes of Kashim until he was stopped by Defendants nos.2 and 3. Plaintiff has thereby suffered damage on account of the stoppage of his service for one year. Before the Regional Transport Board came into existence, the District -- Superintendent of Police had made a list of services on different routes in the Kanara District and on that basis Defendant no.2 had issued permits of different routes to several operators. In that list of limitation of services, Kashim held permits for the above three routes. These routes and permits could legally be transferred and such transfers had been recognised by Defendant no.2. Such permits for routes could not legally be cancelled by Defendant no.2. Defendant no.2 treated the application of Plaintiff and Kashim to transfer the routes in Plaintiff's name as an application for a fresh route. This assumption was wrong and untenable. The Civil Court decree was ignored by the Defendants. Hence the suit. The cause of action arose on 6th April 1942. Notice under Section 80 of Civil

Procedure Code has been given.

3. Defendants contend at exhibit no.11:- Under the Motor Vehicles Act IV of 1939 and the rules thereunder, the granting or refusing of an application for stage carriage permits or for a transfer of a permit held by one person to another is in the absolute discretion of the Transport Authority constituted under the Act. The Plaintiff's remedy against the order of refusal by the Transport Authority was by way of appeal to Provincial Transport Authority or to the Provincial Government subject to such appeal, the decision of the Transport Authority is final and the Plaintiff cannot ask the Civil Court to substitute its own discretion for that of the Transport Authority. The Act or the Rules do not provide for a Civil Suit as a remedy for the rejection by the Transport Authority. The suit is impliedly barred under Section 9 of Civil Procedure Code. Kashim did not hold any permit on Kumta-Sirsi-Hubli Road. In 1939-40 he held permits for two vehicles nos. T.6527 and K.3534 on Sirsi-Kumta Road. Of these the latter was seized by the Commercial Corporation Ltd. Bombay, for Kashim's default in paying instalments under the hire purchase agreement. The transfer by Kashim to Plaintiff of his rights and good-will in these routes and the motor vehicles is denied. The transfer, if any, was without the permission of the Transport Authority and hence in contravention of the motor vehicles Act and the rules thereunder. The transfer could not therefore be recognised by the Regional nor by the Provincial Transport Authority. The decree in Original Suit no. 324 of 1941 of the Sirsi Court was collusive as it was filed long after the decision of the Regional Transport Authority refusing the Plaintiff's application and as there was no cause of action for the suit, there being no conflict between Plaintiff and Kashim, the decree is not binding on the Government as it was not a party to it. It is not true that the appeal was rejected without giving the Plaintiff an opportunity of placing

his case before the Provincial Transport Authority. Kashim was found to have no interest in the services run by him and the Transport Authority found that the buses then plying were adequate to meet the demand and hence the Plaintiff's application was rejected. The claim for damages is untenable and misconceived * and it was denied that the P.P. no.4. Plaintiff has suffered damages. The amount claimed was arbitrary and exaggerated. Prayer for mandatory injunction is not maintainable. Defendants nos. 2 and 3 are not necessary parties. The suit be dismissed with costs.

4. Issues (exhibit no.16) are :-

1. Does Plaintiff prove that Shaik Kashim Shaik Suleman Kagal held 2 permits to run his motor buses on Kumta-Sirsi road and one permit to run his buses on Kumta-Sirsi-Hubli road ?
2. Does Plaintiff prove that the said Shaik Kashim transferred his rights in the said permits and his Bus No.BYX 786 to Plaintiff
3. Is the decree in Civil Suit no.384 of 1941 of Sirsi Court binding on Defendants ?
4. Does Plaintiff prove that Defendant no.2 acted illegally in rejecting Plaintiff's application to recognise him as entitled to the routes mentioned in issue no. 1 ?
5. Does Plaintiff prove that Defendant no.3 acted illegally in rejecting the appeal filed by Plaintiff against the order of Defendant no.2 ?
6. Do Defendants prove that the suit is barred under Section 9 of Civil Procedure Code ?
7. Are Defendants nos. 2 and 3 necessary parties ?
8. Is Plaintiff entitled to any and what damages ?
9. What decree ?

5. My findings are :-

1. Kashim held permit in 1939-40 to run bus nos. M.6527 and K.3534 on Kumta-Sirsi route in 1939-40 and held permit to run bus no.5484 on Sirsi-Hubli in 1938-39 and not thereafter.
2. Kashim transferred his right in bus no.BYX 786 and to ply it along Sirsi-Kumta route and did not transfer any other right.

3.to 5, No.

6. No.

7. No.

8. No.

9. See below.

6. This suit arises out of an alleged breach of the provisions of the Motor Vehicles Act (India Act IV of 1939) and the rules framed under that Act by the Government of Bombay, by the authorities entrusted with the administration of the said Act and rules.

7. The Plaintiff's case is that Shaik Kashim Shaik Suleman [illegible] had permits to run two buses on Kumta-Sirsi route and to run one bus on Kumta-Sirsi-Hubli road. These permits are, according to Plaintiff, route permits. The Plaintiff alleges that said Kashim transferred to him his rights in the said routes and his title to bus no.BYX 786 and that on the strength of that transfer, he, with the consent of said Kashim, applied to the Regional Transport Authority to recognise the transfer and to allow Plaintiff to ply 3 buses on Kumta-Sirsi road and that the Regional Transport Authority rejected his application. Plaintiff further alleges that he filed an appeal against that order to the Provincial Transport Authority who dismissed the appeal. The Plaintiff has therefore filed the present suit. So for a declaration that the Transport Authority was bound to recognise the transfer by Kashim to him of the right in the said routes and the right in the bus BYX 786 and prays for a mandatory injunction directing the Transport Authority to transfer the permits and the routes in the Plaintiff's name.

8. In the papers produced on behalf of the Defendants, we find at exhibit no.25 an application made by the Plaintiff to the Regional Transport Authority to issue permits to run two vehicles on Sirsi-Kumta route and one vehicle on Banvasi-Yellapur route. The buses mentioned in exhibit no.25 were nos. M 6107, T.6527 and M.2283. Exhibit no.25 was granted in a modified form. It cannot be known from the papers what was

exact permit that was given. But that is not very material for our purpose. It however appears from exhibit no.28 that when this application was filed objections were invited and about five people -- objected to granting to Plaintiff permits as asked for in exhibit no.25. The basis of the claim made by Plaintiff and Kashim which was rejected by the Regional Transport Authority is to be found in Plaintiff's application exhibit no.28 on a plain paper and Kashim's application on a printed form exhibit no.31 both dated 22nd October 1940. In exhibit no.31 permit is asked for 3 buses on Kumta-Sirsi route. In exhibit no.28 the Plaintiff has stated "you are aware under the terms of the affidavit filed Mr. Cassim, I am the only lawful owner for the hitherto services and the routes owned by him and similarly also he has filed his written statement before the local police." The Plaintiff has not shown where the affidavit -- referred to in exhibit no.28 was filed. He has not got it produced. The statement before the local police is exhibit no.30. The substance of exhibit no.30 which was recorded on 22nd October 1940 is as follows:- O.P. no.6

> Till a year before his statement he owned four buses and at the time of the statement he owned only two buses bearing nos. T.6527 and K.3534 but the later was seized by the Company and in its place Plaintiff was running his bus no. M 6107. Plaintiff was related to him. He (Kashim) was being maintained out of the income of the said buses. He has entrusted the management of running buses on Sirsi-Kumta road obtained by him and that Regional Transport Authority was informed accordingly. He (Kashim) owned bus no. M.8805 but it was slightly out of repairs and hence it was not being -- operated and that it was be repaired and brought into use.

The said statement of Kashim does not contain a word to show that he had transferred his interest in the routes or in the buses, owned by him. The statement merely shows that Kashim was in financial difficulty and was in indifferent health and was not himself able to look after the management of running the buses on the routes alloted to him and that he had therefore entrusted the work of running the buses on the routes to the management of his relation - the Plaintiff. In the

granted application exhibit no.31 written in English it has been stated that the ownership of the vehicles had been transferred by Kashim to the Plaintiff. In view of the statement in Kannad in exhibit no.30, it is doubtful if that sentence in exhibit no.31 was written with Kashim's knowledge. Exhibit no.31 also does not show that Kashim had transferred to Plaintiff his right in the routes. Now let us see what routes were assigned to Kashim according to the Limitation register. We find from exhibit no.42 that in the year 1939-40 Kashim was allowed to ply bus Nos. T.6527 and K.3534 along Kumta-Sirsi route and then in 1939-39 he was permitted to ply bus no.M.5484 along Sirsi-Hubli route. In the year 1939-40 his name was shown in respect of Sirsi-Hubli route but it has been subsequently scored out. In the application exhibit no.31 there is no prayer to give a permit to ply a bus along Hubli-Sirsi route. The Plaintiff cannot therefore make out any grievance that the permit given to Kashim in 1938-39 to ply one bus between Sirsi-Hubli was not granted to him. The only question therefore is about the right to ply buses along Sirsi-Kumta route. The Plaintiff has not produced the writing by which Kashim purported to transfer his rights in the routes and in one bus which has been alleged in Civil Suit no.384 of 1941 as having been passed on 8th April 1940. In the evidence it has transpired that it was passed on a stamped document. That document is not produced. Kashim now states before the Court that the transfer was gratuitous and that it was merely through friendship. But in the decree in Civil Suit no.384 of 1941 of Sirsi Court, exhibit no.47, we find that the transfer was for a consideration of Rs.875/-. The theory of transfer and specially for consideration is not at all satisfactorily proved. The decree has been obtained on 20th December 1941 in a suit which was filed on 4th November 1941 that is exactly 9 months after the application exhibit no.31 was rejected on 4th February 1941 by the Regional Transport Authority. From the statement exhibit no.30 given by Kashim, it is clear that

he had not transferred his rights in the routes or the vehicles to the Plaintiff but that he had merely entrusted the management to Plaintiff. The applications exhibit nos.28 and 31 read with the -- statement exhibit no.30, merely mean an application by Kashim himself for the necessary permit. I have already shown from exhibit no.4a that Kashim had permit to run bus no..T.6527 and no.K.3534 along Sirsi-Kumta route. Exhibit no.32 shows that bus no.K.3534 was re-possessed by the Commercial Credit Corporation Ltd., on 27th September 1939. Kashim had therefore no interest in that bus on the date of his application exhibit no.31 dated 22nd October 1940. Bus no.T.6527 is equivalent to BYA 736. This will be seen from exhibit no.44. This was owned by Mr. G.G.Deshpande of Belgaum and it was given to Kashim on hire purchase agreement. Deshpande sold it to Plaintiff and both of them applied to the District Superintendent of Police, Kanara, Karwar to transfer the registration of that bus in the name of Plaintiff. The hirer Kashim also agreed to that transfer. Hence the ownership of that bus was ordered to be * * e.p. no.6. transferred in Plaintiff's name. (Exhibit no.41). In view of -- exhibit no.41 it can be inferred that Bus no.T.6527 was one of the three buses which Plaintiff wanted to ply for hire on Sirsi-Kumta route. From the minutes of the Regional Transport Authority of the meeting held on 6th September 1940 (exhibit no.50), it will be seen that the Regional Transport Authority has conceeded Plaintiff's right to ply one bus along Sirsi-Kumta route. The Plaintiff's -- application for two extra buses which were said to be formerly run by Kashim was only taken up for consideration. In that meeting it was held that information should be called for from the District Superintendent of Police Karwar as to whether Kashim had any interest in them and it was decided that the permits may be given if he had interest in them and that if he had ceased to have any interest in them. the Plaintiff's application for two extra buses should be treated as a fresh application for a new permit and that the applicat- ion should be decided on its merits vis-a vis the other owners plying

buses on that route. It was further decided that the prayer for Banavasi-Yellapur route (which was mentioned in exhibit no.25) was one for a new route and hence it was refused. In the subsequent meeting held on 3rd December 1948 the Regional Transport Authority decided that Kashim was unable to continue the services and that Plaintiff's application should be regarded as a fresh application. It was further decided that extra buses were not required on the Sirsi-Kumta route and hence Plaintiff's application for two extra buses was therefore rejected. (Exhibit no.51). The Plaintiff then filed an appeal to the Provincial Transport Authority. The Provincial Transport Authority found that Plaintiff did not claim as an ordinary but as a sharer or a partner of Shaik Kashim and hence Plaintiff could not claim more than what Kashim himself possessed. Plaintiff had produced before the Provincial Transport Authority two permits in the name of Kashim. These vehicles were hired by Kashim from Deshpande. One of them was plying on Sirsi-Kumta route and the other on Kumta-Hubli-Sirsi-Katgal route. Both these permits had expired on 31st March 1939 and were not renewed. These two vehicles were re-possessed by Deshpande prior to 5th March 1939. On these facts the Provincial Transport Authority found that neither Kashim nor Plaintiff were operating these vehicles from 5th March 1939 and that they had no right to get extra permits, and that the buses then plying were adequate to meet the demand and hence confirmed the order of the Regional Transport Authority. (Exhibit no.35). The letter of Mr. Deshpande referred to in exhibit no.38 is exhibit no.39

* e.d. no.9.

9. The learned pleader for the Plaintiff argued that the limitation register prepared by the District Superintendent of Police before the Regional Transport Board came into existence created a perpetual right and a transferrable right to the operators mentioned in that register, either to run their buses on the routes mentioned against their names or to transfer the rights to any one they liked and that the Transport Authority

were in law bound to recognise such transfer. Even assuming this argument to be valid which is not as I will show later. the claim could be only in respect of two buses on Kumta-Sirsi route as no application was made for transferring the route between Hubli and Sirsi. The Plaintiff's learned pleader relies on Section 59 of the Motor Vehicles Act 1939 (India Act IV of 1939) and rule 71 of the Motor Vehicles Rules framed by the Bombay Government. Section 59 of the Act runs as follows:- "(1) Save as provided in Section 64, a permit shall not be transferable from one person to another -- except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

(2) The holder of a permit may, with the permission of the -- authority by which the permit was granted, replace by another vehicle of the same nature and capacity any vehicle covered by the permit."

(3):.....

This section clearly shows that the transfer of a permit is not valid except with the permission of the Transport Authority. This Section does not compel the Transport Authority to recognise any transfer of permit. On the contrary sub-clause 4 of Rule 71 states that the -- Regional Transport Authority may summon the transferor and transferee and may, if it deemed fit, deal with the application as if it were an application for a permit. * Section 47 of the Act lays down the -- various factors which should be taken into account in granting the permit. One of the grounds is the adequacy of the existing road passenger transport service. The Regional Transport Authority has also to take into account the representations made by persons -- already providing road transport facilities. In the present case the Regional Transport Authority has found that there were adequate number of buses plying along Sirsi-Kumta route and they must have also taken into consideration the representations made by the other operators

*O.P. no.10.

55

who were running their buses on that route. The Plaintiff ha admitted that his case was heard both by the Regional Transport Authority as well by the Provincial Transport Authority though in the plaint. Plaintiff has alleged that he was not heard by the Provincial Transport Authority. These provisions of law do not at all establish the Plaintif contention that the transport authorities have no discretion or right, but to recognise the transfer.

10. From the facts stated above, it will be seen that Kashim had as per Limitation Register exhibit no.42 permit t run 2 buses nos.T.6527 = HYK 786 and M.3534 on Kumta-Sirsi route and that he had not got the right to ply 3 buses on Kumta-Sirsi route. The Plaintiff's claim for permit for one bus in addition to two buses which Kashim was allowed to ply on Kumta-Sirsi route is apparently not tenable. I have alrea shown that from exhibit no.30 it is clear that permit for running one bus on Kumta-Sirsi road has been granted. I have further shown that that bus must be bus no.T.6527 = HYK 786. The only question now remains is whether Plaintiff was entit to get permit to run one more bus besides bus no.T.6527 on Kumta-Sirsi route. If Plaintiff had succeeded to show that I had purchased from Kashim bus no.M.3534, he could have urged with some force that he should be allowed to ply it on Kumta Sirsi route. But I have already shown that bus no.M.3534 was re-possessed by the Commercial Credit Corporation on 27th September 1939 (exhibit no.32). Hence on 22nd October 1941. date of exhibits nos.30 and 31. Plaintiff or Kashim had no interest in that bus and hence neither was entitled to run that bus on Kumta-Sirsi route. The Transport authorities were therefore justified in not recognising Plaintiff's claim. The learned pleader for Plaintiff appears to suggest that the right in a particular route is a right not dependent upon the ownership of a particular bus, but an independent right and if that right is recognised in favour of a person, that perso

O.P. no.11.

can ply any bus on that route. This is a fallacious argument. In the A ct or the rules there is nothing like a simple route permit unconnected with any bus. If the owner of a passenger bus has to ply if for hire, he has to obtain the permit of the Transport Authority to ply it and in granting or rejecting the permit for that bus, the Transport Authority has to decide the route on which it should be allowed to be plied and if the Authority finds that the permit can be allowed for plying that bus, a particular route is assigned to it. In this view of the matter Kashim had a right to ply bus no. M.3534 on Kumta-Sirsi route and when that bus was repossessed by the Company, he had no title in that bus and he had no transferrable rights in it or in the route on which it was plying and that he could not transfer any right in that bus or route to Plaintiff. Plaintiff has not been able to show any provision of law suggesting that he could independantly of the permit of the Transport Authorities introduce any bus in place of Bus no. M.3534. In this view of the matter the Plaintiff has not been able to show that he was entitled to ply one bus in addition to BYX 786 & T.6527 on Sirsi-Kumta route. The Plaintiff has failed to prove the theory of Transfer from Kashim of any bus besides Bus no. BYX 786 & T.6527. He has therefore made out no case to show that he was entitled to ply two buses in addition Bus no. BYX 786 on Kumta-Sirsi route. His application has therefore been rightly rejected by Transport authorities.

11. The decree in Civil Suit No.[illegible] of [illegible] Court is — clearly a collusive decree and certainly it is not binding on the Defendants who were not parties to it. Even assuming thattit is binding, it merely created right in Plaintiff in bus no. BYX 786 and to ply it on Kumta-Sirsi route. It did not give Plaintiff right to ply two more buses on Kumta-Sirsi route and it is of no use to Plaintiff to establis his claim in the suit.

12. It was urged on behalf of the Defendants that the * suit was impliedly barred under Section 9 of the Civil Procedure Code. If the Legislature wanted to provide for the bar of a suit, it could have enacted accordingly as it has done in several other acts.like the —

Revenue Jurisdiction Act and others. I therefore find that the suit is not barred under Section 9 of Civil Procedure Code.

12. Defendants nos. 2 and 3 are not technically necessary because their offices are created under the Statute and the Government of the Province of Bombay will be responsible for any acts done by them in the performance of their duties — enjoined upon them by the Acts.

14. In view of the finding that the Plaintiff was not entitled to permits, he has suffered no damage. If it is found that he was entitled to permits and thus entitled to damages, I must find that the Plaintiff has failed to place on record any material to prove damages though he could have done so by calling other operators and his own accounts of subsequent period which are in his custody.

O r d e r.

The suit is d___ssed.

O r d e r.

The Suit is dismissed.

The Plaintiff to pay Defendants' costs (in one set) and bear his own.

10th June 1947.

Sd. S.S. Tallur,

Civil Judge, Senior Division.

Suits: Kanara.

For (1) a declaration that the plaintiff is the legal transferee of the permits for two motor buses on the Sirsi-Kumta route, and for one bus on the Kumta-Hubli-Sirsi route previously held by Shaikh Kassim Shaikh Suleman Kagalkar and that the order passed by defendants Nos. 2 and 3 refusing to recognise such transfer are illegal (2) recovery of Rs.995 as damages from the defendants for alleged illegal stoppage of his bus services for one year and (3) a mandatory injuction directing the defendants to transfer the aforesaid permits and route to the plaintiff.

Government of Bombay,
Legal Department,
Resolution No.
Bombay Castle, 21st July 1947.

Read Government Resolution, Legal Department, No. 8582, dated the 17th November 1945.

Endorsement by the District Government Pleader, Kanara, No. 162 dated the 11th June 1947, forwarding a copy of his letter No.161 dated the 11th June 1947 addressed to the Regional Transport Officer, Belgaum, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Kanara on the 10th June 1947 when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Karwar. Civil Suit No. 113 of 1945.	dated the 11th June 1947, forwarding a copy of his letter No.161 dated the 11th June 1947
Sayad Issac Sayad Budan . . . Plaintiff; versus (1) The Province of Bombay. (2) The Regional Transport Board, Belgaum. (3) The Provincial Transport Authority, Bombay.	

"The suit is dismissed.
The plaintiff to pay defendants' costs (in one set) and bear his own".

Endorsement No. 192 dated the 9th July 1947 forwarding a copy of his letter No. 191 dated the 9th July 1947 addressed to the Regional Transport Officer, Belgaum, together with uncertified copies of decree and judgment.

RESOLUTION. - The result of the suit is recorded.

By order of the Governor of Bombay,

R. M. Mehta,
Assistant Secretary to Government.

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To

The Secretary Provincial Transport
Authority, Bombay,
The Secretary, Regional Transport
Authority, Karnatak Region, Belgaum.

BM.

Submitted after issue
1. file in 5 Kan-3/45